

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

ROHM AND HAAS CHEMICALS LLC, )

Defendant. )

Civil Action No. \_\_\_\_\_

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, Rohm and Haas Chemicals LLC, violated the Clean Air Act, 42 U.S.C. §§ 7404–7671(q) (“CAA”); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992(k) (“RCRA”); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601–9675(c) (“CERCLA”); and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001–11050 (“EPCRA”).

The Complaint against Defendant arises from a July 6–15, 2004 EPA inspection of Defendant’s chemical-manufacturing facility located at 4300 Camp Ground Road in Louisville, Jefferson County, Kentucky (the “Facility”). Defendant manufactures polymers from butadiene, styrene, third vent monomer, methyl methacrylate, ethyl acrylate, and butyl acrylate, and distills crude methyl methacrylate and third vent monomer at the Facility.

The complaint alleges that Defendant violated the Commonwealth of Kentucky’s State Implementation Plan by failing to repair a deteriorated seal on a methyl methacrylate storage tank; the National Emissions Standards for Hazardous Air Pollutant Emissions for Group IV Polymers and Resins, 40 C.F.R. § 63.2 Subpart H, by failing to identify, and failing to maintain a complete list of, equipment subject to leak monitoring regulations; the National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Options, 40 C.F.R. § 63, Subpart DD, and Defendant’s federal RCRA permit, by operating a spent solvent tank with a conservation vent that exceeded no detectible organic emissions when the vent was in the closed position; RCRA boiler and industrial furnace regulations, 40 C.F.R. § 266.103(j)(1)(ii), by failing to monitor for carbon monoxide at all times while burning

hazardous waste in a boiler; Commonwealth of Kentucky RCRA regulations, 401 KAR §§ 35:190(8) and 38:010(1)(2), by failing to remove a disused hazardous waste accumulation tank and storing hazardous waste without a permit; Defendant's Commonwealth of Kentucky RCRA permit by failing to provide adequate and timely RCRA emergency response training to all personnel; and the release notification provisions of CERCLA and EPCRA, 42 U.S.C. §§ 9603(a) and 11004(a)(3)(A) for failing to immediately notify the National Response Center, Local Emergency Planning Committee, and State Emergency Response Commission following releases of 1,3-butadiene.

Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); Section 325 of EPCRA, 42 U.S.C. §§ 11045(b)(3); and over the Parties.

2. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1395(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); and Section 325 of EPCRA, 42 U.S.C. §§ 11045(b)(3) because the violations alleged in this complaint occurred or are occurring at a facility located within this District.

3. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

4. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g); Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1); and Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3).

## II. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

6. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of this Consent Decree are implemented. At least 30 Days prior to such transfer (with the exception of transfers associated with internal corporate restructuring or transfers between affiliated entities within Rohm and Haas Company, for which no prior written notice shall be necessary), Defendant shall provide a copy of this Consent

Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 4, the United States Attorney for the Western District of Kentucky, and the United States Department of Justice, in accordance with Section XIII of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

7. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree. This provision is not intended to waive any rights Defendant may have against any such person.

### III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CAA, RCRA, CERCLA or EPCRA, or in regulations promulgated pursuant to the CAA, RCRA, CERCLA or EPCRA, shall have the meanings assigned to them in the CAA, RCRA, CERCLA or EPCRA, or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Commonwealth" shall mean the Commonwealth of Kentucky;

b. “Complaint” shall mean the complaint filed by the United States in this action;

c. “Consent Decree” shall mean this decree and all appendices attached hereto (listed in Section XXII);

d. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

e. “Defendant” shall mean Rohm and Haas Chemicals LLC;

f. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

g. “Effective Date” shall have the definition provided in Section XIV;

h. “Facility” shall mean Defendant’s chemical-manufacturing facility located at 4300 Camp Ground Road in Louisville, Jefferson County, Kentucky;

i. “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral;

j. “Parties” shall mean the United States and Defendant;

k. “Section” shall mean a portion of this Consent Decree identified by a roman numeral;

l. “SEP” shall mean Supplemental Environmental Project;

m. “Separator Cover SEP” shall mean the SEP described in Appendix A;



n. "Software Module SEP" shall mean the SEP described in

Appendix B;

o. "United States" shall mean the United States of America, acting on

behalf of EPA;

#### IV. CIVIL PENALTY

10. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$35,975 as a civil penalty. If the entire civil penalty is not paid within 30 Days after the Effective Date of this Consent Decree, interest shall begin to accrue at the rate specified in 28 U.S.C. § 1961.

11. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of this Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Kentucky, 510 West Broadway, 10th Floor, Louisville, KY 40202, phone number (502) 582-5911. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Rohm and Haas Chemicals LLC, and shall reference the civil action number and DOJ case number 90-5-2-1-08598/1, to the United States in accordance with Section XIII of this Consent Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, OH 45268

12. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

13. Defendant shall implement two Supplemental Environmental Project (“SEPs”). Defendant shall install a cover on an organic water gravity separator that will substantially reduced air emissions from the separator, in accordance with all provisions of Appendix A of this Consent Decree (the “Separator Cover SEP”). The Separator Cover SEP shall be completed in accordance with the schedule established in Appendix A. Defendant shall also purchase and provide to the City of Louisville, Kentucky, a hazard analysis software module, in accordance with all provisions of Appendix B of this Consent Decree (the “Software Module SEP”). The Software Module SEP shall be completed in accordance with the schedule established in Appendix B.

14. Defendant is responsible for the satisfactory completion of the SEPs in accordance with the requirements of this Consent Decree. Defendant may use contractors or consultants in planning and implementing the SEPs.

15. With regard to the SEPs, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA’s approval of the SEPs is complete and accurate;

b. that Defendant in good faith estimates that the cost to implement the Separator Cover SEP is \$115,000;

c. that Defendant in good faith estimates that the cost to implement the Software Module SEP is \$18,671;

d. that, as of the date of executing this Consent Decree, Defendant is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

e. that the SEPs are not projects that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;

f. that Defendant has not received and will not receive credit for the SEPs in any other enforcement action;

g. that Defendant will not receive any reimbursement for any portion of the SEPs from any other person; and

h. that for federal income tax purposes, Defendant will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

16. SEP Completion Reports. Within 30 days after the date set for completion of each SEP, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XIII of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented;

b. a description of any problems encountered in completing the SEP and the solutions thereto;

c. an itemized list of all eligible SEP costs expended;

d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and

e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

17. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's SEP Completion Report.

18. After receiving each SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section VII of this Consent Decree.

19. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section IX of this Consent Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

20. Each submission required under this Section shall be signed by the Facility plant manager or another official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 25.

21. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Consent Decree shall include the following

language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Rohm and Haas Chemicals LLC, taken on behalf of the U.S.

Environmental Protection Agency under the Clean Air Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Emergency Planning and Community Right-to-Know Act."

## VI. REPORTING REQUIREMENTS

22. Defendant shall submit the following reports:

a. Within 30 Days after the end of each quarter (i.e., by April 30, July 30, October 30, and January 30) after the Effective Date of this Consent Decree, until termination of this Consent Decree pursuant to Section XVII, Defendant shall submit a report for the preceding quarter that shall include a discussion of Defendant's progress in satisfying its obligations in connection with the Separator Cover SEP and the Software Module SEP under Section V of this Consent Decree including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in the SEP Work Plans attached as Appendices A and B to this Consent Decree, and a summary of costs incurred since the previous report.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the violation, with

an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

23. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Consent Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

24. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

25. Each report submitted by Defendant under this Section shall be signed by the Facility plant manager or another official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the

system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

26. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CAA, RCRA, CERCLA, EPCRA, or their implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

27. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### VII. STIPULATED PENALTIES

28. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

29. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

30. SEP Compliance.

a. If Defendant fails to satisfactorily complete either SEP by the deadline set forth in Section V, Defendant shall pay stipulated penalties for each day for which it fails to satisfactorily complete that SEP, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,250	15th through 30th day
\$1,500	31st day and beyond

b. If Defendant fails to implement the Separator Cover SEP, or halts or abandons work on the Separator Cover SEP, Defendant shall pay a stipulated penalty of \$115,000. The penalty under this subparagraph shall accrue as of the date specified for completion of the SEP or the date performance ceases, whichever is earlier.

c. If Defendant fails to implement the Software Module SEP, or halts or abandons work on the Software Module SEP, Defendant shall pay a stipulated penalty of \$18,671. The penalty under this subparagraph shall accrue as of the date specified for completion of the SEP or the date performance ceases, whichever is earlier.

d. If Defendant fails to comply with the milestones in Appendix A to this Consent Decree for implementing the Separator Cover SEP, or the milestones in Appendix B



to this Consent Decree for implementing the Software Module SEP, Defendant shall pay stipulated penalties for each failure to meet an applicable deadline, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,250	15th through 30th day
\$1,500	31st day and beyond

e. The following stipulated penalties shall accrue per violation per Day for each violation of the Reporting Requirements of Section VI of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,250	15th through 30th day
\$1,500	31st day and beyond

31. Except as provided in subparagraphs 30.b and 30.c, above, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

32. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

33. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

34. Stipulated penalties shall continue to accrue as provided in Paragraph 31 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

35. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

36. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

37. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

#### VIII. FORCE MAJEURE

38. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

39. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to:

Kevin Taylor  
Air Enforcement Section  
Air, Pesticides & Toxics Management Division  
EPA Region 4  
61 Forsythe St. S.W., 10<sup>th</sup> Floor  
Atlanta, GA 30303  
(404) 562-9134  
Taylor.Kevin@epamail.epa.gov

within 72 hours of when Defendant first knew that the event might cause a delay. Within 7 days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

40. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

41. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

42. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 38 and 39, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### IX. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Consent Decree.

44. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotia-

tions shall not exceed 45 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

45. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. Defendant's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant. Defendant's Statement of Position may request that the dispute be resolved through an Alternative Dispute Resolution ("ADR") process through EPA's Conflict Prevention and Resolution Center. If EPA agrees that ADR is appropriate, the Parties will pursue ADR for a period not to exceed 45 Days, which period may be extended by written consent of both Parties. In the event that EPA does not agree to ADR, or either Party elects to withdraw from ADR, dispute resolution will proceed in accordance with Paragraph 46.

46. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position, unless Defendant has requested ADR pursuant to Paragraph 45. If Defendant has requested ADR pursuant to Paragraph 45 and EPA determines that ADR is not appropriate, the United States shall serve its Statement of Position within 45 days of the date Defendant is notified of that determination. If the Parties pursue ADR but either Party subsequently withdraws from ADR, the United States shall serve its Statement of Position

within 45 days of the date of withdrawal. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

47. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Consent Decree.

48. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

49. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 45 pertaining to the adequacy of the performance of SEPs undertaken pursuant to this Consent Decree, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 45, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of this Consent Decree.

50. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 34. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

#### X. INFORMATION COLLECTION AND RETENTION

51. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples;
- d. obtain documentary evidence, including photographs and similar data; and



e. assess Defendant's compliance with this Consent Decree.

52. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant or its representatives, contractors, or consultants. Upon request, EPA shall provide Defendant splits of any samples taken by EPA or its representatives, contractors, or consultants.

53. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

54. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the

following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

55. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

56. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

57. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date on which this Consent Decree is lodged with the Court.

58. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 57. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties

or injunctive relief under the CAA, RCRA, CERCLA or EPCRA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 57.

59. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 57 of this Section.

60. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, RCRA, CERCLA, EPCRA, or with any other provisions of federal, state, or local laws, regulations, or permits.

61. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties not party to this Consent Decree, nor does it limit the

rights of third parties not party to this Consent Decree against Defendant, except as otherwise provided by law.

62. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

## XII. COSTS

63. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

## XIII. NOTICES

64. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

### To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08598/1

### To EPA:

Chief, Air and EPCRA Enforcement Branch  
US EPA Region 4  
61 Forsyth St., S.W., 12 Floor  
Atlanta, GA 30303

and

Vera S. Kornylak  
Associate Regional Counsel  
Office of Environmental Accountability  
US EPA Region 4  
61 Forsyth St., S.W., 13th Floor  
Atlanta, GA 30303

To Defendant:

Jane Bowen  
Plant Manager  
Rohm and Haas Chemicals LLC  
4300 Campground Road  
Louisville, KY 40216

and

Jana Zigrye  
EHS Manager  
Rohm and Haas Chemicals LLC  
4300 Campground Road  
Louisville, KY 40216

and

Margaret Lattin Bazany  
Senior Counsel  
Rohm and Haas Company  
100 Independence Mall West  
Philadelphia, PA 19106

65. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

66. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XIV. EFFECTIVE DATE

67. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### XV. RETENTION OF JURISDICTION

68. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Consent Decree.

#### XVI. MODIFICATION

69. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

70. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section IX of this Consent Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 49, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### XVII. TERMINATION

71. After Defendant has complied with all other requirements of this Consent Decree, including those relating to the SEPs required by Section V of this Consent Decree, and

has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

72. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Formal Dispute Resolution of any dispute regarding termination, under Paragraph 45 of Section IX, until 90 days after service of its Request for Termination.

#### XVIII. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of this Consent Decree.

#### XIX. SIGNATORIES/SERVICE

75. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

76. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### XX. INTEGRATION

77. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.



XXI. FINAL JUDGMENT

78. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

XXII. APPENDICES

79. The following appendices are attached to and part of this Consent Decree:

- a. "Appendix A" contains the Separator Cover SEP;
- b. "Appendix B" contains the Software Module SEP.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
Western District of Kentucky

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Rohm and Haas Chemicals LLC:

FOR PLAINTIFF UNITED STATES OF AMERICA:

\_\_\_\_\_  
Date

\_\_\_\_\_  
ELLEN M. MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

4/4/04  
\_\_\_\_\_  
Date

By: \_\_\_\_\_

STEVEN O'ROURKE  
Senior Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone: (202) 514-2779

4/4/08  
\_\_\_\_\_  
Date

By: \_\_\_\_\_

DAVIS H. FORSYTHE  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone: (202) 616-6528

FOR PLAINTIFF UNITED STATES OF AMERICA (CONT.):

DAVID L. HUBER  
United States Attorney  
Western District of Kentucky

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Date

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JAY GILBERT  
Assistant U.S. Attorney  
Western District of Kentucky  
510 West Broadway, 10th Floor  
Louisville, KY 40202

FOR PLAINTIFF UNITED STATES OF AMERICA (CONT.):

\_\_\_\_\_  
Date

\_\_\_\_\_  
MARY J. WILKES  
Regional Counsel and Director  
Office of Environmental Accountability  
U.S. EPA Region 4

\_\_\_\_\_  
Date

\_\_\_\_\_  
VERA S. KORNYLAK  
Associate Regional Counsel  
Office of Environmental Accountability  
US EPA Region 4

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Rohm and Haas Chemicals LLC:

FOR DEFENDANT ROHM AND HAAS CHEMICALS LLC:

3-25-08

Date

\_\_\_\_\_  
JANE G. BOWEN  
Plant Manager  
Rohm and Haas Chemicals LLC  
4300 Campground Road  
Louisville, KY 40216

3/26/2008

Date

\_\_\_\_\_  
MARGARET LATTIN BAZANY  
Senior Counsel  
Rohm and Haas Company  
100 Independence Mall West  
Philadelphia, PA 19106-2399